IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 6543 of 2000.

Date of Decision: 27. .09. 2007

State of H.P. Appellant.

Versus

Tilak Raj. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Sh.Bhupinder Ahuja Advocate vice Shri Anup Chitkara Advocate.

Surinder Singh, J . (oral)

The respondent was acquitted for the offence under Section 379 and 506 of the Indian Penal Code and also under Section 33 of the Indian Forest Act in Criminal appeal No. 18 of 1998 decided on 4-8-2000 by the Sessions Judge, Chamba reversing the judgment of conviction passed by the trial Court.

Heard and gone through the record.

Precisely, the case of the prosecution has been that on 4-12-1990, the respondent is alleged to have felled one Deodar tree in Demarcated Protected Forest (DPF) Darot without seeking any permission from the Forest Department. The respondent had removed the conversion of the said tree from the forest. When the forest officials had tried to take into possession the timber, the respondent intimidated them. Finding a prima facie case, the respondent was charge-sheeted for the aforesaid offences to which

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

he pleaded not guilty and claimed trial. The prosecution examined its witnesses to prove the charges. The defence of the respondent was that he was granted T.D. of one tree of Deodar which was converted by him. Since Pradhan Sahanu Ram nourished an enmity against him, he got fabricated the instant case in collusion with forest officials. However, no defence was led.

On re-appraisal of the evidence by the first Appellate Court, it was found that the case hinged upon the damage report which was not proved. Though PW3 Shri Chiknu Ram has stated that he felled one tree at the instance of the respondent which was bearing some number and Chand Ram (PW5) is stated to have converted the felled tree into logs but Sansar Chand (PW8) Block Officer clearly admitted that the respondent was granted T.D. permit for one tree for which respondent was having every right to convert into logs. Learned first appellate Court further noticed that there was enmity inter-se PW1 Kamal Kumar forest guard, PW12 Des Raj, PW13 Chanderma, PW14 Chhaju Ram and PW16 Jeet Ram on one hand and the respondent on the other. It gad come in evidence that the offence was allegedly committed on 4-12-1990 but no action was taken till 28.1.1991 and the logs remained in the Jungle without any action on behalf of the Forest Department which created a doubt on the authenticity of the prosecution case. The findings of acquittal recorded by the first appellate Court are born out from the evidence on record. In addition to it, I have found that the prosecution has failed to prove that the place from where the alleged tree is stated to have been felled was a demarcated protected forest, as the notification of the protected forest as envisaged under Section 29 of the Indian Forest Act has not been proved on the record and in order to constitute the offence under

Section 379 of the Indian Penal Code, it was also incumbent upon the prosecution to prove the possession of the State of the alleged place to prove the offence of theft. The above facts coupled with the fact that the respondent was having a T.D. permit for one tree as admitted by the Block Officer aforesaid, creates a dent in the prosecution case, thus, the respondent was authorized to remove those logs of the permitted tree and if the forest guard had caused any impediment, to its removal, unauthorisedly, the respondent could have resisted, thus, no case of criminal intimidation is made out. Therefore, in the totality of the circumstances, the prosecution has failed to prove the case against the respondent beyond a reasonable doubt. Therefore, I concur with the findings arrived at by the learned first appellate Court on which the acquittal of the respondent has been based. It requires no interference. Accordingly the appeal is dismissed. The respondent is discharged of his bail bonds entered upon by him at any stage of the trial.

(Surinder Singh)
Judge.

September 27, 2007.
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